

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

IAN B.,

Claimant

vs.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

OAH No. N 2007040467

DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter in Corte Madera, California on May 22, 2007.

Lisa Rosene, L.C.S.W., Chief of Social Work Services, represented the service agency, Golden Gate Regional Center (GGRC).

Claimant Ian B. was represented by his mother Elise B.

The matter was submitted on May 22, 2007.

ISSUE

Whether GGRC should be required to fund an integrated play group for claimant from Autism Network for Global Educational and Lifelong Support (ANGELS), a non-vendored provider.

FACTUAL FINDINGS

1. Claimant is a six-year-old boy born July 14, 2000. He is eligible for regional center services based on a diagnosis of autism. Claimant lives with his parents and younger sister in Fairfax, California.

2. Claimant has significant deficits in social functioning. In March 2004, Psychology, Learning and You (P.L.A.Y.) – Behavioral Consultants were retained to provide consultative services for an intensive educational in-home program for claimant. P.L.A.Y. provides consultative services on a weekly basis. P.L.A.Y. has also provided training for the one-to-one assistants that work with claimant four days per week for two-hour sessions during the intensive educational in-home program supervised by P.L.A.Y. The consultative services provided by P.L.A.Y. and the intensive educational in-home program supervised by P.L.A.Y. are funded by the school district.

3. Claimant began receiving intensive educational in-home services in March 2004 and FloorTime services in January 2004. Claimant currently participates in a home based program 15 hours per week with a one-to-one aide. The aide works with claimant on improving his play skills, academics, writing abilities and language abilities.

4. P.L.A.Y. established specific goals and objectives for claimant for 2004-2005. Various goals related to play skills and peer relationships were listed under the heading “Play/Social Skills.” Goal #1 was for claimant to “be able to initiate a set of 10 2-3 step toy actions with 80% accuracy by January 2006.” Goal #2 was for claimant to “be able to demonstrate various pretend play actions when given 3-5 ‘sets’ of toys.” Goal #5 was for claimant to “be able to INITIATE greetings (within 1 foot) and label people with 80% accuracy by January 2006.” Goal #6 was that when claimant was “presented with 3-5 choices of highly motivating items/activities, he [would] be able to imitate appropriate toy play and approximate/correctly state any 4-5 word verbalizations with 80% accuracy. . . by January 2006.” Goal #7 was for claimant to “be able to demonstrate imitation skill and follow one-step directions when integrated in a small play group (1-2 peers) by January 2006.” An additional “Expressive Language” goal was that claimant “be able to respond to 2 personal information questions [e.g., what is your name, how old are you] when asked by varied people, with 80% accuracy by January 2006.”

In a January 2005 summary report P.L.A.Y. noted claimant had experienced significant gains in all areas, including expressive language, during the nine months since P.L.A.Y. joined claimant’s team of providers.

5. Claimant also receives play skill and social skills training at school. Claimant attends school for six hours per day. He is mainstreamed with an aide for four hours and in a special class for two hours. The school district also provides both speech and occupational therapy to claimant.

6. Claimant’s Individualized Education Plan (IEP) dated January 6, 2005, recognizes his need for social skills training and lists several annual goals related to play skills and peer relationships. One such goal is: “By 1/6/06, given a verbal cue, [claimant] will engage in any of 3 known associative games with peers with 80% accuracy in 4/5 observable days.” A second such goal is: By 1/06, [when] given a verbal and gestural cue, ‘say hi to your friends’ or when greeted by a known peer/adult, [claimant] will initiate or respond to a greeting

with 80% accuracy in 4/5 observable days.” Another social goal is: “By 1/6/06, given a visual (picture of peers and choice of turn taking games), verbal and gestural cue, [claimant] will choose a game to play with a peer of his choice during adult monitored play in 4/5 opportunities in 4/5 observable days.”

Claimant’s mother testified that claimant’s new IEP, which was completed in January 2007, is similar to his January 2005 IEP and that social skills training continues to receive significant emphasis.

7. Claimant’s mother feels that claimant would benefit from additional social skills training through an integrated play group. Although claimant has made excellent progress in many areas, including speech, she is not satisfied with the progress he has made in his ability to play and interact with other children. Claimant does not currently engage in meaningful play with his peers and does not initiate play with other children. Claimant can play reciprocally with adults, but does not know how to interact appropriately with his peers. Claimant’s mother feels that participation in an integrated play group will help claimant feel comfortable playing appropriately with other children. She believes that an environment that is less chaotic than the school environment, such as the one offered by the Autism Network for Global Educational and Lifelong Support (ANGELS), will be more effective in providing claimant an opportunity for peer-to-peer interaction and social imitation, and result in greater social skill advancement.

Claimant’s mother is requesting that GGRC be required to fund an integrated play group through ANGELS. The integrated play groups provided by ANGELS are specially organized small groups of children with a higher ratio of expert players (typically developing peers/siblings) to novice players (children with autism). Each group is customized as part of a child’s IEP/therapy program and is led by a qualified adult facilitator (play guide). Guided participation is used to support players in mutually enjoyed play experiences that encourage social interaction, communication, play and imagination. Integrated play groups take place in natural settings, including schools, therapy and the community.

8. Michael Corley, Ph.D., is a staff psychologist for GGRC. He testified that the integrated play groups offered by ANGELS constitute adaptive behavior training, which is educational in nature, and therefore should be provided by the school district. Corley pointed out that in an integrated play group an autistic child is being taught, and is learning, how to play with other children. He opined that this is the type of behavior that is normally taught at school through modeling and other instructional methods. Corley also felt that the school environment was a more natural setting in which to learn how to play with others and that the skills learned in such an environment would be more readily transferable to other classrooms and social settings.

9. Telford Moore, Ph.D., is a behavioral psychologist with GGRC. He similarly opined that the integrated play group has an educational purpose and therefore should be funded by the school district. Moore also expressed concern that there is very little research to support

the effectiveness of the integrated play group, and he would oppose funding of the play group on this basis as well.

10. GGRC maintains it cannot fund an integrated play group with ANGELS because it is an educational service which the school district is responsible to provide. The Regional Center relies upon the following provision of the Lanterman Act:

Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services. (Welf. & Inst. Code, § 4648, subd. (a)(8); and see Welf. & Inst. Code, § 4644, subd. (a).)

The Regional Center interprets this provision as prohibiting it from funding services if there is another funding source (in this case the school district) that is receiving public funds (here federal and state funds) to provide the services. Although it is unwilling to fund the integrated play group, GGRC represents that it is willing to assist claimant's mother in advocating with the school district for funding of the ANGELS integrated play group.

11. GGRC also maintains that it cannot fund an integrated play group with ANGELS because ANGELS is not a vendored provider. The Lanterman Act requires the provider of a service to be vendorized prior to the provision of services. (Welf. & Inst. Code, § 4648, subd. (a)(3) & (4).)

LEGAL CONCLUSIONS

1. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.),¹ the State of California accepts responsibility for persons with developmental disabilities (§ 4501) and pays for the majority of their "treatment and habilitation services and supports" in order to enable such persons to live in the least restrictive environment possible (§ 4502, subd. (a)). The state agency charged with implementing the Lanterman Act is the Department of Developmental Services (DDS). The Lanterman Act authorizes DDS to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4620.)

2. In order to determine how an individual client is to be served, regional centers are directed to conduct a planning process that results in an individual program plan (IPP) designed to promote community integration, and as independent, productive and normal a life as possible. (§§ 4646, subd. (a) and 4502, subd. (a).); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) The IPP is developed by an interdisciplinary team and must include participation by the client and/or his or her representative. Among other things, the IPP must set forth goals and objectives for the client,

¹ All citations are to the Welfare and Institutions Code unless otherwise indicated.

contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs) and reflect the client's particular desires and preferences. (§ 4646; § 4646.5, subds. (a)(1), (a)(2) and (a)(4); § 4512, subd. (b); § 4648, subd. (a)(6)(E).) One of the services that may be provided pursuant to the IPP is social skills training. (§ 4512, subd. (b).)

3. Although regional centers are authorized to provide a wide range of services to facilitate implementation of the IPP, they are specifically directed not to fund duplicate services that are available through another publicly funded agency. (§ 4648, subd. (a)(8).) Where a service is available elsewhere, the regional center is required to “. . . identify and pursue all possible sources of funding for consumers receiving regional center services. . . .” (§ 4659, subd. (a).)

In this case the school district is currently funding social skills training/services for claimant. Claimant seeks additional social skills funding (in the form of an integrated play group) through GGRC because claimant's parents are not satisfied with his progress in learning to play appropriately with other children. Claimant essentially asks GGRC to fund the same services (social skills training) already funded by the school district because they want to accelerate his progress. Any such funding by GGRC would be a duplication of the state funding available for educational services. Since educational services are publicly funded, GGRC is prohibited from providing funding to duplicate the services the school district provides.

4. GGRC also contends it cannot fund a non-vendored program. Welfare and Institutions Code section 4648, subdivision (a)(3)(A), authorizes a regional center to purchase services or supports for a consumer pursuant to “vendorization or contract.” Subdivision (a)(3)(B) of that same section authorizes the regional center to reimburse an individual or agency for services or supports provided to a consumer. Subdivision (a)(4) limits the rate of reimbursement to “a cost not to exceed the maximum rate of payment for that service or support established by the department.”²

² Welfare and Institutions Code section 4648, subdivision (a)(3) and (4), provides in pertinent part:

(a) Securing needed services and supports.

...

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate his or her parents, . . . determines will best accomplish all or any part of that consumer's program plan.

(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements

It is undisputed that ANGELS is not a vendored service provider. GGRC is therefore precluded under the Lanterman Act from providing funding for services provided by ANGELS.

ORDER

Petitioner's request that GGRC be required to fund an integrated play group through the Autism Network for Global Educational and Lifelong Support (ANGELS) is denied.

DATED: _____

CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.

necessary in order to provide the service.

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, . . . and has completed the vendorization procedures . . .

(4) Notwithstanding subparagraph (B), a regional center may contract or issue a voucher for services and supports provided to a consumer or family at a cost not to exceed the maximum rate of payment for that service or support established by the department. . . .